

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

GREGORY L. HUGHES,

Plaintiff

v.

CIVIL NO. 3:CV-00-17

JOSEPH W. CHESNEY, et al.,

(Judge Kosik)

Defendants

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

This pro se civil rights action pursuant to 42 U.S.C. § 1983 was originally filed by Gregory L. Hughes in the Eastern District Court of Pennsylvania and subsequently transferred here on January 4, 2000. At the relevant time periods Hughes was confined at the State Correctional Institution at Frackville, Pennsylvania. The matter proceeds on an amended complaint which consists of the original complaint (Doc. 1, Attach. 6) and an amended complaint filed on May 23, 2000. (Doc. 16.) Named defendants include current and former employees at SCI-Frackville. The docket in this case reveals a lengthy procedural history which will not be set forth herein. On September 21, 2005, the court engaged in a merits analysis and ultimately granted a motion for summary judgment filed by Defendant O'Connor.¹ (Doc. 197.) Presently pending is a motion to dismiss filed by the Corrections Defendants in this case. (Doc. 183.) The motion to dismiss is only

¹ Plaintiff had failed to oppose O'Connor's motion after having been directed to do so multiple times.

filed with regard to plaintiff's official capacity claims for monetary damages, as well as his claims for injunctive relief. Defendants state that following the court's resolution of the motion to dismiss, an answer to the remaining claims in the amended complaint will be submitted.²

An Order was issued by the court on August 2, 2005, directing plaintiff to submit his opposition to the Correction Defendants' motion within fifteen (15) days, or risk the motion being deemed unopposed and granted pursuant to Federal Rule of Civil Procedure 41(b). (Doc. 190.) On August 15, 2005, plaintiff sought an enlargement of time within which to submit his opposition. His request was granted, and he was afforded until October 5, 2005 to file his opposition. (Doc. 195.) As of this date, no opposition has been filed. As such, the court will grant Defendants' motion to dismiss and the Corrections Defendants will be directed to file an answer within fifteen (15) days with regard to the remaining claims in this action.

Generally, a dispositive motion may not be granted merely because it is unopposed. However, when a plaintiff fails to prosecute or comply with a court order, the court may dismiss the action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Plaintiff was warned pursuant to the court's order of August 2, 2005, that the failure to oppose the motion to dismiss would result in a Rule 41(b) dismissal. No opposition has been submitted or a further enlargement of time sought. Accordingly, Defendants' motion to dismiss will be granted. Within fifteen (15) days, Defendants will be directed to submit a response to the remaining claims in the standing complaint.

² The remaining claims are with regard to retaliation, denial of access to the courts and the violation of the First Amendment guarantee to religious freedom.

Further, it appears that Hughes is no longer incarcerated. The court was informed by the Records Department at the State Correctional Institution at Mahanoy, Pennsylvania, Hughes' former place of confinement, that Hughes completed his sentence on December 29, 2004, and is out of prison serving three (3) years of probation. The court notes that Hughes has failed to oppose a previous motion for summary judgment filed by Defendant O'Connor in addition to the present motion to dismiss filed by the Corrections Defendants. This failure on the part of Hughes may be an indication that he is no longer interested in pursuing this lawsuit. If this is true, and in an effort to conserve judicial resources, Hughes will be directed to advise the court within ten (10) days if he wishes to continue litigating this matter. The failure to do so may result in the matter being dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to comply with a court order.

**ACCORDINGLY, THIS 26th DAY OF OCTOBER, 2005, IT IS HEREBY ORDERED AS
FOLLOWS:**

1. The Corrections Defendants' motion to dismiss (Doc. 183) is **granted** in accordance with Fed. R. Civ. P. 41(b). Defendants are directed to file their response to the remaining claims in the standing complaint within fifteen (15) days.
2. Plaintiff is directed to advise the court within ten (10) days as to whether he wishes to continue litigating this action as discussed above.

s/Edwin M. Kosik
United States District Judge

EMK:lq